# BDB LAW
# TAX CASE DIGEST

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# Tax Case Digest on…




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# COURT OF TAX APPEALS

## DECISION HIGHLIGHTS

***The final decision that is appealable before the CTA is the Final Decision on Disputed Assessment (FDDA). Hence, failure to await the decision of the CIR in the administrative level is not tantamount to premature filing so long as the BIR already issued the FDDA.***

Taxpayer, an electric cooperative, was assessed by the Bureau of Internal Revenue (BIR) for alleged deficiency taxes for taxable year 2012. BIR issued a PAN and subsequently a Formal Letter of Demand (FLD). The taxpayer was able to file a Protest but it was denied by BIR, prompting the former to file a Protest before the CIR. The taxpayer received a Final Decision on Disputed Assessment (FDDA) thereafter, so the taxpayer, without waiting for the decision of the CIR, filed its Petition for Review before the CTA. The BIR alleged the failure of the taxpayer to wait for the decision of the CIR prior to filing the Petition for Review is tantamount to premature filing. Hence, the CTA should dismiss the case for failure to exhaust administrative remedies.

CTA ruled that it has jurisdiction over the case. The final decision of the CIR or his authorized representative on disputed assessment that is appealable before this Court is the FDDA. Taxpayer received its FDDA and it timely filed its Petition within the 30-day period from such receipt. The fact that the Taxpayer failed to await the decision of the CIR prior to filing the Petition is of no moment for what is crucial in conferring jurisdiction on this Court is the whole or partial denial of the protest by the CIR or his authorized representative, which was subsequently issued and received by the taxpayer prior to the filing of the present Petition for Review. Hence, the Court acquired jurisdiction over the case. ***(Agusan Del Norte Electric Cooperative Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9376, August 5, 2019)***

***Electric Cooperatives registered under NEA are exempt from payment of income tax.***

It was alleged that Taxpayer cannot claim perpetual tax exemption under PD 269 since exemption is merely for a period of thirty (30) years or until the cooperative becomes completely free from indebtedness incurred from borrowing, whichever comes first. Hence, taxpayer is allegedly subject to income tax.

The Court ruled that PD 269 provides for the exemption from taxes, imposts, duties and fees to electric cooperatives. The limit of 30-year period, mentioned in PD 269, pertains to taxes other than income tax. Thus, considering that petitioner is exempt from income tax by provision of the law, it is likewise exempted from payment of MCIT, it being in the nature of an income tax. ***(Agusan Del Norte Electric Cooperative Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9376, August 5, 2019)***

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***The LOA must be served to the taxpayer within thirty (30) days from its date of issuance; otherwise, it becomes null and void, unless revalidated.***

BIR issued a Letter of Authority (LOA) on October 22, 2012 to the taxpayer and the same was served on January 14, 2013. It subsequently issued a PAN and the taxpayer timely filed its Protest. However, BIR denied the same and issued the corresponding FLD. Taxpayer then filed a Petition for Review challenging the validity of the assessment on the ground that the tax audit was void for failure of the BIR to serve the LOA within 30 days from issuance and to revalidate the same. The BIR claimed that the failure of the Revenue Officer to serve the LOA within 30 days from issuance does not affect the validity of an assessment and it only subjects the revenue officer concerned to administrative sanctions. Hence, the LOA and the assessment are valid.

CTA ruled that for an audit and examination of books to be considered as lawful, the same must be based on a valid LOA. It must be served or presented to the concerned taxpayer within thirty (30) days from its date of issuance; otherwise, it becomes null and void, unless revalidated. In this case, while the subject LOA was issued on October 22, 2012, records reveal, however, that it was served only on January 14, 2013, or eighty-four (84) days after the date of its issuance. Thus, for failure of the concerned revenue officers to observe the 30-day mandatory period, the issued LOA has already become void. It was already without force and effect when it was served on the taxpayer. Hence, the subject tax assessment issued by the BIR is void. ***(Edmund U. Bermejo IV vs. Commissioner of Internal Revenue, CTA Case No. 9310, August 5, 2019)***

***No law or regulation required that the payments should be made in foreign currency before a Subic Ecozone or Freeport Enterprise can avail of the 5% preferential tax rate.***

Taxpayer is engaged in the business of providing water and sewerage services in the Subic Special Economic and Free Port Zone (SSEZ). It provided water and sewerage services to Olongapo City. The BIR assessed the taxpayer for deficiency taxes when it considered the taxpayer's operations in Olongapo City as not entitled to the 5% preferential tax treatment (PTR). Taxpayer argued that it is entitled to the 5% preferential tax treatment (PTR) since under the law, rules and regulations, Olongapo City is part of the Subic Bay Special Economic Zone (SSEZ) and outside of the customs territory. The BIR counter-argued that the PTR only apply if the services are paid in foreign currency inwardly remitted through the Bangko Sentral ng Pilipinas as provided under RR No. 2-2005. Hence, since the taxpayer failed to comply with the condition, it is allegedly not entitled to the PTR.

The Tax Court held that the Subic Bay Freeport is a separate customs territory consisting of the City of Olongapo and the municipality of Subic, Province of Zambales, and the lands formerly occupied by the Subic Naval Base. Hence, its income generated from Olongapo City should not be treated as income within the Customs Territory and is subject to the 5% PTR. Also, the tax court ruled that no law or regulation required that payments should be made in foreign currency before a Subic Ecozone or Freeport Enterprise can avail of the 5% preferential tax rate. Hence, the contention of BIR is incorrect. ***(Subic Water***

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***and Sewerage Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9074, August 14, 2019)***

***Filing of application for merger with the BIR is not a precondition before the surviving corporate taxpayer may use the unutilized input tax of the absorbed corporation.***

Taxpayer entered into a merger with Mytel Mobility Solutions, Inc. (Mytel). Subsequently, the unused input tax of Mytel was absorbed and utilized by taxpayer. The BIR then issued an assessment for deficiency value-added tax (VAT) arising from the alleged utilization of unused input tax of Mytel. The BIR alleged that taxpayer failed to file any application for merger with the BIR thus any benefits, e.g., transfer of input tax of the absorbed entity to the surviving entity cannot yet be availed of. A corresponding application for cancellation of registration should have also been filed with the BIR. Hence, for failure to fulfill the two important requisites, i.e., filing of the notice of merger and the notice of cancellation with the BIR, the merger has no legal effect as far as acquiring the unused input tax credits of the absorbed entity by the taxpayer.

The CTA held that the prior filing of an application for notice of merger and /or notification of closure with the BIR is not a precondition for the utilization of the unused input value-added tax (VAT) credits of the absorbed corporation. The merger shall take effect upon issuance by the SEC of the Certificate of Filing of the Articles and Plan of Merger and it also marks the moment when the consequences of a merger take place. Upon the issuance of the Certificate, all effects of the merger, such as transfer of rights, properties, etc. are automatically transferred to the surviving entity. Hence, there is no need for taxpayer to apply for application of merger with the BIR before utilizing the unused input VAT. Likewise, the application for cancellation of registration with the BIR pertains to the effects of a closure of a company from a tax perspective and it is separate from the effects of a statutory merger resulting to a dissolution of the absorbed company. ***(Commissioner of Internal Revenue vs. MY Solid Technologies & Devices Corporation, CTA En Banc No. 1767 (CTA Case No. 8854), August 9, 2019)***

***The 120-day period for the BIR to render a decision from a VAT refund claim should be counted from the lapse of the 30-day period notice of BIR to submit additional documents and not from the last date of actual***

The taxpayer claimed for VAT Refund with the BIR. On July 29, 2013, a LOA was issued by the latter pursuant to Mandatory Audit-Claim and a separate LOA was issued the next day (July 30, 2013) authorizing another Revenue Officer to assist in the audit investigation and requesting for the submission of additional documents. In the course of the examination, taxpayer submitted additional documents in batches, where its last batch of documents was submitted on October 14, 2014. Due to the CIR's inaction on its administrative claim for refund, taxpayer filed a Petition for Review before the CTA on March 13, 2015. The BIR challenged the timeliness of the filing of the Petition since the same was made beyond the 120-day period counted from the issuance of the last Letter of Authority dated July 30, 2013. The taxpayer on the other hand insisted that the reckoning period must be counted from October 14, 2014 or the last day they submitted additional documents.

***submission of documents.***

The CTA ruled and applied the doctrine in Pilipinas Total Gas case since the claim for tax refund was filed prior to June 11, 2014 or the effectivity of RMC No. 54-2014. The taxpayer filed its administrative claim on June 25, 2013. Thus, it had thirty (30) days from the time of filing of its administrative claim for tax credit or refund to submit all the required supporting documents. If in the course of the investigation, additional documents are required, the BIR must inform taxpayer of the need to submit additional documents through a notice, and it shall have thirty (30) days to comply. Upon completion of all required documents, the 120-day period shall commence; but in all cases, all filings and submissions must be completed within the two-year period Hence, the 120-day period shall be counted thirty (30) days from July 30, 2013 when the BIR issued a request for additional documents, or from August 29, 2013. Since the Petition was filed only on March 13, 2015, the judicial claim was filed beyond the prescriptive period. ***(Taisei Philippines Construction, Inc. vs. Commissioner of Internal Revenue, CTA En Banc No. 1825 (CTA Case No. 9008), August 7, 2019)***

***Our Take***

**NOTE**: The VAT refund claim in this case pertains to taxable year 2012. Prior to June 11, 2014 or the effectivity of RMC No. 54-2014, if the BIR required the taxpayer to submit additional documents, the latter must submit the same within thirty days.

***The BIR has no valid authority to issue a second LOA after the three (3)-year prescriptive period had expired.***

The BIR issued an LOA and conducted an audit wherein taxpayer was allegedly found liable for deficiency taxes. The taxpayer paid the assessed amount of the BIR. The BIR, thereafter, issued a "second" LOA for Income Tax and VAT for the same taxable period, with the BIR claiming "first LOA did not cover the Income Tax and VAT issues on the sale of the property subject of the present case". Taxpayer claimed that the Assessment was issued or served upon it beyond the three-year period provided by NIRC, as amended. The BIR argued that the 10-year period applies in this case since there was fraud when taxpayer deliberately misclassified the sales pertaining to a sale of land as a capital asset since the same was being leased and rented out as parking lot within two (2) years, prior to its sale, making it a capital asset. Thus, the prescriptive period applicable is 10 years instead of 3 years.

The CTA ruled that there was no fraud in this case that warrants the application of the 10-year prescriptive period to assess the Taxpayer. Citing the case of Philippine International Air Terminals Co., Inc. vs. Commissioner of Internal, the CTA ruled that where the BIR had already made an initial assessment for deficiency taxes in a taxable year, and the taxpayer paid the deficiency tax assessed, the BIR has no valid authority to issue, after the three (3)-year prescriptive period had expired, a second or third assessment for the same taxable year. Here, the first LOA which the Taxpayer settled and the second

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LOA covered the same taxable year 2007. Thus, the taxpayer should not have been assessed again for taxable year 2007. ***(The Professional Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9502, August 13, 2019)***

***The law does not require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. Hence, no need to prove that there is direct connection of the purchases or input tax to the finished product whose sale is zero-rated.***

BIR argued that the taxpayer's input value-added tax (VAT) is not attributable to valid zero-rated sales because the law itself does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable. BIR alleged further that what is refundable are "creditable input taxes" that are "attributable" or must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. The connection between the purchases and the finished product is "concrete" and not "imaginary" or "remote". Here, the taxpayer allegedly failed to prove that there is direct connection of the purchases or input tax to the finished product whose sale is zero-rated.

The CTA ruled that the NIRC, as amended, does not require that the input taxes subject of a claim refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. Also, it allows the allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales. The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. Thus, the law did not limit input taxes to those purchases that only form part of the finished product of the taxpayer. Thus, the contention of the BIR is erroneous. ***(Rio Tuba Nickel Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9127, August 8, 2019)***

***The requirement that an administrative claim be filed prior to a judicial claim is not complied if both claims were filed on the same date.***

Taxpayer imported various cigarette and alcohol products for use in its international flights. It was assessed by the BIR for excise taxes and the taxpayer paid under protest. It subsequently filed a claim for refund with the CIR and on the same date, filed a Petition for Review with the CTA. The BIR alleged that the filing of the Petition was premature for the taxpayer failed to await the decision of the CIR before filing its judicial claim.

The CTA ruled that law does not require the CIR to act upon the administrative claim before claimant can file its judicial claim for refund. Section 229, as worded, only requires that an administrative claim be filed prior to the judicial claim. The primary purpose that an administrative claim be filed prior to the judicial claim is to serve as a notice of warning to the CIR that court action would follow unless the tax alleged to have been collected erroneously or illegally is refunded, was defeated. Failure to seek relief initially at the administrative level would result in dismissal of the judicial claim for refund

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once it is elevated to the Court of Tax Appeals (CTA). In this case, the taxpayer failed to establish that prior to the judicial claim for refund, administrative claims for refund were in fact filed with the respondent CIR. There is non-compliance considering that both the administrative claim and the judicial claim for refund was simultaneously filed on August 22, 2016. The primary purpose of filing an administrative claim prior to the judicial claim was defeated in this case. Hence, the Petition was prematurely filed by the taxpayer in the instant case. ***(Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9435, August 8, 2019)***

***Receipt of the FLD prior to the receipt of PAN did not violate the right to due process when a subsequent AFLD was received by the taxpayer.***

Taxpayer received a FLD from the BIR for all internal revenue taxes allegedly due for taxable year 2010. It received a PAN thereafter, and an amended FLD (AFLD) covering the same tax period with no substantial difference as to the once originally issued. The taxpayer then alleged that the service of PAN should precede the FLD and that the BIR violated its right to due process when the PAN was belatedly served. It further alleged that the issuance of the AFLD was merely an afterthought and was meant to cover up BIR's mistake in serving the original FLD earlier than the PAN. Hence, the deficiency tax assessments should be cancelled due to lack of factual and legal bases.

The Court held that the BIR did not violate the right to due process of the taxpayer. The latter received the requisite assessment notices from the BIR and was given the opportunity to contest the assessment. Although the PAN was belatedly received by the taxpayer, records show that it was issued on August 15, 2013. The original FLD and the AFLD were issued on September 25, 2013 and January 13, 2014, respectively. The issuance of PAN preceded the issuance of AFLD. Thus, the BIR substantially complied with the due process requirements provided by law when the taxpayer was accorded its right to be informed of its deficiency tax assessment, and the right to dispute the same. It is erroneous for the taxpayer to reckon the date of issuance of the subject tax assessments on September 25, 2013, considering that the same had been effectively superseded and supplanted with the subsequent issuance of the AFLD on January 13, 2014. ***(Cagayan De Oro Doctors, Inc. (Madonna and Child Hospital) vs. Commissioner of Internal Revenue, CTA Case No. 9260, August 5, 2019)***

***There must be a "disputed assessment" that is seasonably elevated to the CTA before it can take cognizance of a case.***

Taxpayer is the proprietor of JG Builders. Various notices were sent by the BIR through registered mail to JG Builders and to the taxpayer, however, the BIR did not receive any reply. Hence, the administrative process of collection was initiated by the BIR. The taxpayer challenged the validity of the assessments alleging, amongst others, that the assessment notices are void because the it was served to a wrong address, hence, she never received the same.

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The CTA dismissed the case for lack of jurisdiction. The law mandates that there must be a "disputed assessment" that is seasonably elevated to this Court for review. An assessment becomes a disputed assessment after a taxpayer has validly filed its protest to the assessment in the administrative level. The Protest must be compliant with the requirements of the law and regulations which include, among others, that the protest must be filed within thirty (30) days from receipt of the assessment. Hence, there can be no disputed assessment without a valid protest being filed by the taxpayer to dispute the findings in the assessment. Here, the subject assessments did not become "disputed assessment" since the taxpayer failed to dispute and protest the assessment issued by the BIR. Taxpayer set a letter for reconsideration after the lapse of 194 days, hence, it was filed out of time. ***(Jovita G. Panopio vs. Commissioner of Internal Revenue, CTA Case No. 9464, August 6, 2019)***

***In allegations of fraud in the filing of returns, the same must be duly proven that there was willful neglect to file the required tax return.***

The BIR assessed the taxpayer for deficiency taxes. The Taxpayer alleged that the benefits of the Rulings extend to taxpayer as agent of BDO and that the 3-year prescriptive period has already lapsed for the BIR to validly assess the alleged deficiency taxes. The BIR on the other hand alleged that the failure of taxpayer to to file the Withholding Tax Remittance Return and the Documentary Stamp Tax Return for the said transaction is tantamount to fraud and intent to evade payment of taxes. Hence, the 10-year prescriptive period applies.

The CTA held that in allegations of fraud, the same must be duly proven that there was willful neglect to file the required tax return. In this case, although the taxpayer failed to report receipts in an amount exceeding thirty percent (30%) of that declared per return, such is a mere presumption. The BIR merely relied only on the third-party information sources that were not verified by the revenue officers who conducted the examination or assessment. Considering that there was no fraud that warrants the application of the 10-year prescriptive period in this case, the assessment is void for the FAN being issued beyond the 3-year period to assess. ***(First Global Corporation, BYO vs. Honorable Kim Henares, in her capacity as the Commissioner of the Bureau of Internal Revenue, CTA Case Nos. 9172, 9212 and 9242, August 6, 2019)***

***The decisions of the CIR over disputed assessments are separate and independent from his decisions over "other***

The BIR in this case alleged that the taxpayer failed to file its protest on the FAN within the time provided for by the NIRC, as amended. Since taxpayer admitted having received the FLD/FAN on January 10, 2011, it had the opportunity until February 9, 2011, within which to file a valid protest on the assessment. However, it allegedly failed to file said protest within such period. The taxpayer on the other hand, argued that the Letter of Authority is invalid for the failure of the revenue officer to finish the audit within 120 days. There was a re-

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***matters" arising under the NIRC. Thus, the fact that the taxpayer failed to Protest the FAN is not important if the latter questions the validity of the imposition of taxes***

assignment of the undertaking to a new Revenue Officer (RO), and the same done by mere internal indorsement hence the assessments are void for lack of authority of the examining RO.

The RO who continued the audit and the examination has no authority to conduct the same, in the absence of the issuance of a new LOA specifically naming the new RO. Any re-assignment of cases requires the issuance of a new LOA, its fatal infirmity is further highlighted by the fact that it was signed and issued by the RDO only and not by the Revenue Regional Director. Thus, the Court ruled in favor of the Taxpayer. ***(Commissioner of Internal Revenue vs. Royal Class Trading and Transport Corporation, CTA En Banc No. 1832 (CTA Case No. 8844), July 29, 2019)***

***Although ICPA is a commissioned officer of the court, it is the responsibility of the taxpayer to coordinate with ICPA and ensure that the ICPA's report comply with the Court's requirements.***

Taxpayer sought the refund of its unutilized input VAT arising from its zero-rated sales/receipts for taxable year 2011. The CTA Division partly denied the Petition for failure to substantiate the claims of the taxpayer. taxpayer alleged that the CTA's outright non-reliance on the report of the court-commissioned independent CPA (ICPA) and the denial of taxpayer's right to present additional documents amount to denial its right to due process. Also, the taxpayer further alleged that it should not be bound by mistake on the representation of the commissioned ICPA that all the necessary documents had been photocopied and submitted to the Court since the ICPA is an officer of the Court completely independent of the taxpayer.

The CTA en banc ruled that the opportunity to be heard is the essence of the right to due process. Hence, as long as a party is given the opportunity to defend his interests in due course, the said right is not violated. The taxpayer in this case was given several opportunities to prove its refund case during the trial and even during the filing of the motion for reconsideration. Likewise, although ICPA is a commissioned officer of the court it is the responsibility of the taxpayer to coordinate with ICPA and ensure that the ICPA's report comply with the Court's requirements. Hence, it is still the duty of the taxpayer to ensure the sufficiency of the evidence it presented during the trial of the case, especially when it filed its formal offer of evidence and rested its case. Thus, taxpayer's right to due process was not violated. ***(Commissioner of Internal Revenue vs. Toledo Power Co., CTA En Banc Nos. 1778 and 1780, August 15, 2019)***

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***Only documents duly identified by a competent witness and formally offered in evidence will merit admission for the consideration and evaluation by the Court.***

On March 27, 2014, taxpayer filed its administrative claim for refund or issuance of TCC for its alleged unutilized/unclaimed excess input VAT for the four quarters of TY 2012. On August 22, 2014, taxpayer filed before the CTA a Petition for Review.

The CTA denied the claim for refund of the taxpayer ruling that the taxpayer failed to prove that it is a VAT-registered entity. To prove that it is a VAT-registered taxpayer, the taxpayer offered in evidence a certified true copy of BIR Certificate of Registration. However, since the taxpayer failed to have it identified by any of its witnesses, it was denied admission. The said BIR Certificate of Registration was not admitted since it was not identified by a competent witness during the trial on the merits. It does not even appear in any of the Judicial Affidavits executed and identified by the taxpayer's witnesses, precisely it is not found in the minutes of the proceedings during which petitioner's witnesses were presented on the witness stand. ***(Nokia (Philippines), Inc., vs. Commissioner of Internal Revenue, CTA EB No. 1824 (CTA Case No. 8876), August 16, 2019)***

**DISSENTING OPINION (J. Del Rosario**): BIR Certificate of Registration, being a public document, is admissible in evidence notwithstanding that it was not identified by any of taxpayer's witnesses during the trial. A public document is admissible in evidence even without further proof of its due execution and genuineness. The said document is self-authenticating and thus, petitioner is not actually required to have it identified by its witness to prove its genuineness and due execution.

***No amount of ICPA examination would matter without the recommendation of the Director of the MGB and approval of the Sec. of the DENR of the expenses and capital expenditures of the taxpayer to be considered it as recoverable pre-operating expenses.***

Taxpayer filed a letter addressed to BIR Excise LT Audit Division I seeking for the recovery of excise taxes paid on its removals of copper and excise taxes paid dore bars. Without the decision of the BIR on its claim for refund or the issuance of a TCC, the taxpayer filed a Petition for Review with the CTA.

The CTA denied the claim for refund of the taxpayer ruling that, assuming that the claimed excise taxes were paid within the 5-year recovery period, the Court could not grant taxpayer's claim for failure to comply with the requisites set forth in DAO No. 99-56, particularly, the provision listing the expenses and capital expenditures to be considered as recoverable pre-operating expenses. This is on the fact that the taxpayer did not submit to the Court the pertinent supporting documents and work programs to ascertain the date when the recovery period should be reckoned from. Thus, the Court in Division find that the taxpayer failed to present evidence to prove that the imposition of excise tax was made during the recovery period.

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| | However, taxpayer avers that its pre-operating expenses have been examined and validated by independent CPAs twice. Nevertheless, DAO No. 99-56 requires that petitioner's pre-operating expenses be approved by the Secretary of the DENR upon recommendation of the Director of the Mines and Geosciences Bureau (MGB). No amount of ICPA examination would matter without such recommendation and approval. Hence, the Court En Banc denied the claim for failure to submit the necessary supporting documents. ***(Oceana Gold (Philippines), Inc. vs Commissioner of Internal Revenue, CTA EB No. 1904 (CTA Case Nos. 8995 & 9034), August 16, 2019)*** |
| ***Our Take*** | **NOTE**: In the instant case, the Court also pass upon to rule that where the issue involved is characterized as a pure question of law, the doctrine of exhaustion of administrative remedies does not apply. Here, the taxpayer failed to file an appeal with the Secretary of Finance on its question on the validity or constitutionality of an RMC before going to the Court. The reason for this is because an appeal to an administrative officer involving pure questions of law would be an exercise in futility as issues of law cannot be resolved by administrative agencies with finality. At best, the resolution of administrative authorities on these issues is merely tentative. |
| ***Like PAGCOR, its contractees and licensees shall likewise pay corporate income tax for income derived from such "other related services".*** | This is an Omnibus Motion for Reconsideration filed by the taxpayer. It argues that the Court sweepingly concluded that any income from junket gaming operations is subject to corporate income tax. According to the taxpayer the Court's reliance on RMC No. 13-2013 is misplaced and glaringly inconsistent with the provisions under Section 13(2) (a) and (b) of P.D. No. 1869.<br><br>The CTA ruled that taxpayer's argument that it is exempt from corporate income tax pursuant to Section 13 of P.D. No. 1869, insofar as its income from its junket gaming operations under the Junket Agreement and the Supplement to Junket Agreement both entered into with PAGCOR is concerned, is without legal basis. It is without a doubt that, like PAGCOR, its contractees and licensees shall likewise pay corporate income tax for income derived from such "other related services", including income from junket operations, considering that Section 14(5) of P.D. No. 1869 is clear that any income that may be realized from these related services shall not be included as part of the income for the purpose of applying the franchise tax, but the same shall be considered as a separate income and shall be subject to income tax. ***(Prime Investment Korea, Inc. vs Commissioner of Internal Revenue, CTA CASE NO. 9573, August 20, 2019)*** |

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CTA

***Dividend income is excluded from gross receipts for purposes of imposition of LBT.***

The City of Makati assessed the taxpayer for deficiency local business tax (LBT) at the rate of 20% of 1% of its gross receipts in accordance with the provision of Revised Makati Revenue Code (RMRC), thereby categorizing the taxpayer as holding company, as an owner or operator of banks and other financial institutions. The City of Makati argues that the taxpayer's dividend income constitutes taxable gross receipts which may be subjected to LBT. The taxpayer admits that it is a holding company, however, contends should not be taxed as a financial institution under the provisions of RMRC.

The Regional Trial Court (RTC) cancelled the assessment finding that Makati City erroneously imposed LBT on taxpayer's dividend income. Makati City elevated the case to the CTA. The CTA ruled that the City of Makati's taxing power does not extend to the levy of income tax, except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC. The dividends and interests of the taxpayer in this case, which are considered part of its passive income, are therefore not subject to the city's taxing power, unless the taxpayer is a bank or other financial institution, the imposition of LBT on its dividend income is erroneous. ***(Makati City and the City Treasurer of Makati City vs Metro Pacific Tollways Development Corporation, CTA EB NO. 1754 (CTA AC Case No. 172), August 27, 2019)***

***In disputed assessments, taxpayer had the option to either file a petition for review with the Court a quo within thirty (30) days after the expiration of the 180-day period or wait for the final decision of the Commissioner of Internal Revenue on the disputed assessment, even after the expiration of the 180-day period fixed by law.***

Taxpayer was assessed by the BIR for calendar year 2007 covering deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation. When the case reached the CTA, BIR argues that subject assessments had become final, executory, and demandable by reason of the failure of the taxpayer to timely file its Petition for Review pursuant to the provisions of Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended.

The CTA ruled that in the present case where there was inaction on a disputed assessment, taxpayer chose the second option under Section 228 of the NIRC of 1997, as amended. It opted to await the final decision on the protested assessment. On September 03, 2013, taxpayer received the Final Decision dated August 28, 2013 signed by the Regional Director. Accordingly, taxpayer timely filed a "Petition for Review on October 03, 2013, preventing the assessment from becoming final, executory and demandable. ***(Commissioner of Internal Revenue vs. Rieckermann Philippines, Inc, CTA EB No.1855 (CTA Case No. 8715)***

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***Allegation of abuse, arbitrariness, or capriciousness committed by the Court in Division is necessary for the disturbance the factual findings of the Court in Division.***

The taxpayer filed a Petition for Review against the ruling of the Court in Division denying its claim for refund or the issuance of tax credit certificate notwithstanding its support to the claim by competent evidence. The taxpayer argues that the amount of VAT on the following sales invoices, official receipts, and transaction receipts were shown as a separate item therein, hence, a fact that the VAT was actually paid.

The CTA En Banc ruled that the Court in Division already found that said invoices and official receipts had failed to comply with the substantiation requirements because either the VAT was not separately indicated therein or that the transactions were supported only by a statement of account or a transaction receipt and not by valid VAT invoices and official receipts. Thus, this Court a quo will not disturb the factual findings of the Court in Division absent any allegation of abuse, arbitrariness, or capriciousness committed by the said court against the taxpayer. ***(Commissioner of Internal Revenue vs Mindanao II Geothermal Partnership, CTA EB NO. 1768 and 1770 (CTA Case Nos. 7899, 7942 & 7960), August 30, 2019)***

***Transfer of shares is not a transfer of real property ownership contemplated under Section 135 of the LGC.***

The corporation is being assessed of tax on transfer of real property ownership under Section 135 of the Local Government Code (LGC) because of the sale of shares of stock of the corporation resulting to change of ownership and name of the corporation.

The CTA En Banc ruled the transfer of shares is not a transfer of real property ownership under Section 135 of the LGC. Clearly, shares are equities and, by definition, not real properties under the contemplation of Section 135 in relation to Article 415 of the Civil Code. Furthermore, with respect to the corporate assets of the corporation, no conveyance transpired between one person to another, which would have had a real property tax consequence. While there was evidence to prove the conveyance of shares, no evidence was uncovered for the alleged conveyance of the corporate assets subject to Section 135. The legal title to the machineries and buildings remained in the same owner, under these indirect shareholders ***(Province of Pangasinan & Marilou E. Utanes in her Capacity as the Provincial Treasurer of Pangasinan vs Team Sual Corporation, CTA EB NO. 1883 (CTA AC No. 173), August 30, 2019)***

# COURT OF TAX APPEALS

## DECISION HIGHLIGHTS

***Imported goods that remain in the special economic zones or re-exported to another foreign jurisdiction, shall continue to be tax-free.***

The taxpayer is claiming tax refund or issuance of tax credit certificate on the erroneously paid VAT to the Bureau of Customs (BOC) on its importations of petroleum products into the Subic Bay Freeport Zone sold to duly registered locators of Clark Development Corporation and Philippine Economic Zone Authority. On the other hand, the BIR contends that Section 3 of RR No. 2-2012 provides that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that petroleum products imported have been sold to a duly registered locator and have been utilized in the registered activity/ operation of the locator, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT.

The CTA ruled that Republic Act (RA) No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992" grants tax exemption privileges in the special economic zones because the law considers them as separate customs territories, which means that such jurisdictions are, by legal fiction, foreign territories. Thus, RR No. 2-2012 directly contravenes the tax exemptions granted to the taxpayer under RA No. 7227, as amended by RA No. 9400. Since RR No. 2-2012 is of no force and effect, BIR's imposition of VAT on the taxpayer's importation of diesel is without valid basis. Hence, the VAT payment made by taxpayer on the importation of diesel is erroneous and illegal and should be refunded. ***(PTT Philippines Trading Corporation vs Commissioner of Customs and Commissioner of Internal Revenue, CTA Case No. 9132, August 29, 2019)***

***Service by the BIR of assessment notices to a taxpayer's old address despite having earlier knowledge about its new address is no valid notice for purposes of tax assessment.***

The BIR contends that the PAN and FAN sent through mail to taxpayer's old address should be deemed valid as the taxpayer failed to notify in writing the RDOs having jurisdiction over its old and new business locations, as well as the BIR computer center as required in Section 11 of RR No. 12-85.

The CTA En Banc ruled that in *BPI case* (*G.R. No. 135446, September 3, 2003)*, the Supreme Court invalidated the assessment issued by the BIR against a taxpayer for sending the assessment notice to its old address, despite previous knowledge of its new principal place of business. In the BPI case, the assessment was nullified though it was not shown that the taxpayer therein notified in writing the BIR offices enumerated in Section 11 of RR No. 12-85 of its change of address. The quintessence of the said case-law is that service by the BIR of assessment notices to a taxpayer's old address despite having earlier knowledge about its new address is no valid notice for purposes of tax assessment. Succinctly stated, when the BIR acquires information of a taxpayer's new address, notices should be sent to that address alone, lest the assessment shall be invalid and without force and effect. ***(Commissioner of Internal Revenue vs Daewoo Engineering & Construction Company Limited, CTA EB NO. 1799 (CTA Case No. 8829), August 29, 2019)***

# COURT OF TAX APPEALS

## DECISION HIGHLIGHTS

***The bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules set forth in the Revised Rules of Court of Tax Appeals and Sec. 2 of RA 1125 (An Act Creating the Court of Tax Appeals).***

The taxpayer in its Motion for Reconsideration avers that a strict application of the rules can be relaxed in the interest of justice. Allegedly, a strict application of the rules would have an effect of making valid an assessment, which should have been voided in the first place, and the same would indubitably result to the deprivation of taxpayer's right to property because it will then be held liable to pay the amount stated on the subject assessment

The CTA En Banc ruled that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the decree of his thoughtlessness in not complying with the procedure prescribed. ***(Nanox Philippines, Inc. vs Commissioner of Internal Revenue, CTA EB No. 1629 (CTA Case No. 8433) August 28, 2019)***

***Non-compliance with the mandatory period of 120+30 days is fatal to its claim for refund on the ground of prescription.***

The taxpayer filed a Petition for Review against the decision of the Court in Division dismissing the Petition for lack of jurisdiction. The taxpayer insists that the Petition was timely filed within thirty (30) days counted from June 30, 2014 or the date when it was notified by BIR revenue officers of the issuance of RMC No. 54-2014 which denied all pending VAT refund claims. Thus, allegedly it had until July 30, 2014 to file the Petition.

The CTA En Banc ruled that the pronouncements made in RMC No. 54-2014 applies to administrative cases filed after June 11, 2014 only. It must be noted, however, that in the instant case, all administrative claims for refund were filed prior to June 11, 2014, the date of issuance of RMC No. 54-14 and as such, what is applicable to the instant case is 120+30 days rule. Thus, the taxpayer's non-compliance with the mandatory period of 120+30 days is fatal to its claim for refund on the ground of prescription. Accordingly, the Court in Division has no jurisdiction over the taxpayer's judicial claim for refund. ***(Ibex Philippines, Inc. vs Commissioner of Internal Revenue, CTA EB No. 1850 (CTA Case No. 8849) August 28, 2019)***

***The issuance of a new LOA in cases of reassignment or transfer of the investigator is mandatory***

The taxpayer received a copy of the FLD with the FAN finding it liable for deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation, Expanded Withholding Tax, Final Withholding Tax, VAT Withholding, Documentary Stamp Tax and the corresponding penalties. Here, the Court questioned the authority of the Revenue Officers who conducted the audit, though this was not raised as an issue by the parties.

The CTA ruled that RMO No. 43-90, specifically requires the issuance of a new LOA in cases of reassignment or transfer of the investigating Revenue Officer (RO) to another revenue office. On this regard, the Court has already ruled that the issuance of a new LOA in cases of reassignment or transfer of the investigator is mandatory. Here, the absence of a new LOA naming the new ROs rendered them without authority to continue the examination/audit of taxpayer's internal revenue tax liability for TY 2009. ***(FPIP Property Developers and Management Corporation vs Commissioner of Internal Revenue, CTA Case No. 8980, August 28, 2019)***

**SEPARATE CONCURRING OPINION (J. Ringpis-Liban): Notwithstanding the absence of a new letter of authority issued to the newly assigned revenue** officers the same may be given an authority to continue the audit and examination of the taxpayer's books and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case. This may validly done under the provisions of NIRC – Sections 6, 7 & 10 – and the laws on agency under the Civil Code.

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